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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA-SOUTHERN DIVISION**
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11 NATHAN IVAN YOUNG,) Case No. SACV 15-01654-JLS (AS)
12)
13 Petitioner,) **ORDER OF DISMISSAL**
14) **WITHOUT PREJUDICE**
15 v.)
16 STEVEN J. SENTMAN, Chief)
17 Probation Officer, or SANDRA)
18 HUTCHENS, Orange County)
19 Sheriff-Coroner,)
20 Respondent.)
21 _____)

22 **PROCEEDINGS**
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25 On October 15, 2015, Nathan Ivan Young ("Petitioner"), a state
26 prisoner proceeding *pro se*, filed a Petition for Writ of Habeas
27 Corpus by a Person in State Custody ("Petition"), pursuant to 28
29 U.S.C. § 2254, accompanied by a supporting Memorandum of Points and
30 Authorities ("Petition Memorandum") (Docket Entry Nos. 1, 3).
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1 According to the Petition, Petitioner was convicted of second
2 degree commercial burglary, attempted grand theft, and unauthorized
3 use of personal identifying information, in violation of California
4 Penal Code Sections 459-460(b), 664(a), 487(a), and 530.5(a) on
5 December 10, 2014. (Petition at 2). On March 13, 2015, Petitioner
6 was sentenced to 364-days in jail, five years probation, and the
7 Whatever It Takes program ("WIT"). Id. Petitioner did not appeal
8 his conviction or sentence or file any habeas petitions in state
9 court. Id. at 2-3.

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11 The Petition alleges the following grounds for federal habeas
12 relief: (1) Petitioner received ineffective assistance of trial
13 counsel in several respects; (2) The prosecutor engaged in
14 misconduct by presenting false testimony of the landlord and by
15 failing to introduce a Court order concerning the landlord; (3)
16 Petitioner was incompetent during trial; (4) There is newly
17 discovered evidence -- written authorization for Petitioner to
18 transfer rent (to contradict a witness's testimony); and the
19 landlord's attorney is being disbarred for embezzlement; and (5)
20 Challenges to Petitioner's conditions of confinement --
21 Petitioner's probation officer's threat if he filed a
22 discrimination complaint with the "DFEH;" Petitioner was sanctioned
23 to overnight in jail for not dropping out of his MBA program; the
24 WIT ("Whatever It Takes") court program psychiatrist is prohibited
25 from prescribing Petitioner's medication (which he has taken since
26 2007); the WIT court program told Petitioner he would be terminated

1 from the program if his medication is medically necessary; and
2 Petitioner was sanctioned for 2 nights after he was unlawfully
3 evicted for not participating in a 12-step program. (Petition at
4 5-6).¹

6 DISCUSSION

7
8 As a matter of comity, a federal court will not entertain a
9 habeas corpus petition unless the petitioner has exhausted the
10 available state judicial remedies on every ground presented in the
11 petition. 28 U.S.C. § 2254(b) - (c); Baldwin v. Reese, 541 U.S. 27,
12 29 (2004); Rose v. Lundy, 455 U.S. 509, 518-22 (1982). The habeas
13 statute explicitly provides that a habeas petition brought by a
14 person in state custody "shall not be granted unless it appears
15 that -- (A) the applicant has exhausted the remedies available in
16 the courts of the State; or (B) (i) there is an absence of available
17 State corrective process; or (ii) circumstances exist that render
18 such process ineffective to protect the rights of the applicant."
19 28 U.S.C. § 2254(b) (1). Moreover, if the exhaustion requirement is
20 to be waived, it must be waived expressly by the State, through
21 counsel. 28 U.S.C. § 2254(b) (3).

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23
24 ¹ The Court notes, without deciding, that Petitioner's
25 challenges to the conditions of confinement (see Petition at 6;
26 Petition Memorandum at 3-7) may be more appropriately raised in a
27 civil rights action pursuant to 42 U.S.C. § 1983. See Nelson v.
Campbell, 541 U.S. 637, 643 (2004); Wolff v. McDonnell, 418 U.S.
539, 554 (1974).

1 Exhaustion requires that the prisoner's contentions be fairly
2 presented to the state courts, and be disposed of on the merits by
3 the highest court of the state. See James v. Borg, 24 F.3d 20, 24
4 (9th Cir. 1994); Carothers v. Rhay, 594 F.2d 225, 228 (9th Cir.
5 1979). A claim has not been fairly presented unless the prisoner
6 has described in the state court proceedings both the operative
7 facts and the federal legal theory on which his claim is based.
8 Duncan v. Henry, 513 U.S. 364, 365-66 (1995); Picard v. Connor, 404
9 U.S. 270, 275-78 (1971); Johnson v. Zenon, 88 F.3d 828, 830 (9th
10 Cir. 1996).

11
12 Here, Petitioner has not only failed to allege in the Petition
13 that all Grounds raised in the Petition were presented to the
14 California Supreme Court, but has also conceded that all Grounds
15 alleged in the Petition have not been presented to the California
16 Supreme Court.² (See Petition at 3, 5-7). The Petition is
17 therefore unexhausted and subject to dismissal on its face.³

18
19 ² Although Petitioner asserts that he is not required to
20 exhaust administrative remedies before filing a petition that
21 challenging his conditions of confinement where those remedies are
22 futile or inadequate (see Petition Memorandum at 7), the Court
23 notes that the exhaustion of administrative remedies requirement
24 applies to federal, not state, prisoners. See Martinez v. Roberts,
25 804 F.2d 570, 571 (9th Cir. 1986); Chua Han Mow v. United States,
26 730 F.2d 1308, 1313 (9th Cir. 1984); Ruwiwat v. Smith, 701 F.2d
27 844, 845 (9th Cir. 1983).

28 ³ In certain circumstances, the Court has authority to stay
a "mixed" petition containing both exhausted and unexhausted
claims. See Rhines v. Weber, 544 U.S. 269 (2005); King v. Ryan,
564 F.3d 1133, 1143 (9th Cir. 2009) (stay procedure authorized by
Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003), overruled on other
grounds, Robbins v. Carey, 481 F.3d 1143 (9th Cir. 2007) ("Kelly"

1 Petitioner has failed to state an exhausted constitutional
2 claim for relief and therefore, the Petition fails to state a claim
3 upon which relief may be granted. If it "appears from the
4 application that the applicant or person detained is not entitled"
5 to habeas relief, a court may dismiss the action without ordering
6 service on the requested party. 28 U.S.C. § 2243; see also Rule 4,
7 Rules Governing Section 2254 cases in the United States District
8 Courts (petition may be summarily dismissed if petitioner plainly
9 not entitled to relief); Local Civil Rule 72-3.2 (magistrate judge
10 may submit proposed order for summary dismissal to district judge
11 "if it plainly appears from the face of the petition []that the
12 petitioner is not entitled to relief").

13
14 Petitioner may be able to present his claims to the California
15 Supreme Court. See In re Harris, 5 Cal.4th 813, 825 (1993)
16 ("[H]abeas Corpus has become a proper remedy in this state to
17 collaterally attack a judgment of conviction which has been
18 obtained in violation of fundamental constitutional rights.")
19 (citations and quotations omitted).⁴

20 _____
21 remains available after Rhines). However, the present Petition is
22 not mixed; it is completely unexhausted. The Court cannot stay a
23 completely unexhausted petition. See Raspberry v. Garcia, 448 F.3d
1150, 1154 (9th Cir. 2006).

24 ⁴ The Court expresses no opinion concerning whether
25 consideration of a state habeas petition might be foreclosed by
26 state procedural law. The California Supreme Court should evaluate
27 this matter in the first instance. Moreover, even if there exists
an applicable state procedural bar, the California Supreme Court
nevertheless might choose to reach the merits of Petitioner's
claims. See e.g., Park v. California, 202 F.3d 1146 (9th Cir.

ORDER

For the foregoing reasons, the Petition is dismissed without prejudice.⁵

DATED: October 30, 2015.



JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE

Presented this 20th day
of October 2015, by:

/S/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE

2000).

⁵ This dismissal will not relieve petitioner from complying with the one-year statute of limitations set forth in 28 U.S.C. § 2244(d), as amended by the Antiterrorism and Effective Death Penalty Act of 1996, with respect to any future habeas petitions filed in this Court.